

FILED & ENTERED

AUG 28 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

C&M RUSSELL, LLC,

Debtor.

Case No. 2:11-bk-53845-RK

Chapter 11

Adv. No. 2:16-ap-01577-RK

**ORDER DENYING DEFENDANTS' MOTION
TO DISMISS AND/OR SUMMARY
JUDGMENT**

Vacated Hearing:

Date: August 29, 2017

Time: 3:00 p.m.

Courtroom: 1675

MATTIE BELINDA EVANS, an Individual,
Chief Executive Manager as Real Party in
Interest for C&M RUSSELL, LLC, and
Trustee of Mattie B. Evans Family Trust,

Plaintiff,

vs.

ALAN G. TIPPPIE, an individual, attorney
for **SULMEYERKUPETZ**, a professional
corporation, and DOES 1 through 100,
inclusive,

Defendants.

Pending before this court is the Motion to Dismiss and/or Summary Judgment
("Motion"), filed by Defendants **SulmeyerKupetz** and Alan G. Tippie ("Defendants"), on
January 11, 2017, Electronic Case Filing Number ("ECF") 7, and converted to one for

1 summary judgment, by order filed and entered on February 23, 2017, ECF 24. David J.
2 Richardson and Steven F. Werth, of the law firm of **Sulmeyer**Kupetz, represent
3 Defendants. On August 24, 2017, the court entered an order vacating the hearing on
4 the Motion on August 29, 2017 at 3:00 p.m. and taking the Motion under submission,
5 ECF 41. Having reviewed the moving papers and evidence filed in support thereof, the
6 court hereby orders that the Motion is DENIED without prejudice for the reasons set
7 forth below.
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9 Local Bankruptcy Rule 7056-1(b)(2) requires a party moving for summary
10 judgment to “serve, file and lodge with the motion for summary judgment . . . a proposed
11 statement of uncontroverted facts and conclusions of law and a separate proposed
12 judgment.” Federal Rule of Bankruptcy Procedure 7056 provides that “Rule 56
13 F.R.Civ.P. applies in adversary proceedings.” Federal Rule of Civil Procedure
14 56(c)(1)(A) provides that “a party asserting that a fact cannot be or is genuinely disputed
15 must support the assertion by citing to particular parts of materials in the record,
16 including depositions, documents, electronically stored information, affidavits or
17 declarations, stipulations (including those made for purposes of the motion only),
18 admissions, interrogatory answers, or other materials[.]”
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21 Defendants lodged their Proposed Statement of Uncontroverted Facts and
22 Conclusions of Law in Support of Defendants’ Motion to Dismiss Complaint and for
23 Summary Judgment on April 28, 2017, ECF 29. Upon review, the court finds that the
24 Motion does not comply with Federal Rule of Civil Procedure 56(c)(1)(A) because not
25 every proposed uncontroverted fact in the proposed statement of uncontroverted facts
26 and conclusions of law is supported by citations to particular parts of materials in the
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1 record. Many proposed uncontroverted facts asserted in the Motion lack citations to
2 any evidence, e.g., ##1, 2, 3, 8, 20, 21, 23, 24, 30, 32, 34, 40, 41, 42, 46 and 50, and
3 many citations to the record are unclear, i.e., failure to identify the document being cited
4 and only identifying the document as an item attached to the request for judicial notice,
5 ##4, 5, 7, 10, 12, 13, 14, 15, 16, 17, 18, 22, 35, 38, 39, 43, 44 and 51, which citations
6 are not informative for the court. Also, many of the citations lack references to specific
7 pages and lines, which make it difficult for the court to confirm the accuracy of the
8 citations. Defendants' proposed statement of uncontroverted facts and conclusions of
9 law thus, in this court's view, does not meet the letter and spirit of Federal Rule of Civil
10 Procedure 56(c)(1)(A). A model form of how a proposed statement of uncontroverted
11 facts and conclusions of law is done right is Form 14:C in 3 O'Connell and Stevenson,
12 *Rutter Group Federal Civil Procedure Before Trial*, at 14-144 – 14-145 (2017), and
13 counsel is respectfully urged to consult this reference in submitting a proposed
14 statement of uncontroverted facts and conclusions of law for a summary judgment
15 motion in the future. The court notes that Defendants' failure to make clear reference to
16 evidence in their proposed statement of uncontroverted facts and conclusions of law
17 pursuant to Federal Rule of Civil Procedure 56 and Local Bankruptcy Rule 7056-1 has
18 the unfortunate effect of creating unnecessary burdens for the reviewing courts to
19 determine whether the proposed uncontroverted facts are established by the evidentiary
20 record.
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1 Accordingly, the court denies the Motion without prejudice for lack of compliance
2 with the Federal Rules of Civil Procedure and the Local Bankruptcy Rules cited above.

3 IT IS SO ORDERED.

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Date: August 28, 2017



Robert Kwan
United States Bankruptcy Judge